

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: INJECTSOM, LLC Grundy Center, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2007-AFO-04
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TO: Steve E. Simms, Registered Agent
Injectsom, LLC
16759 260th Street
Grundy Center, Iowa 50638

I. SUMMARY

This administrative consent order is entered into between Injectsom, LLC (Injectsom) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding the use of a non-certified manure applicator. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Johnson, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director, Iowa Dept. of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 and the rules adopted or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Injectsom is a commercial manure service located in Grundy Center, Iowa. Injectsom is operated by Steve Simms. Mr. Simms has operated this business for eight years. In November 2006, Injectsom was hired by New Providence Finisher to apply manure.

2. On November 3, 2006, Michelle Johnson, DNR Field Office 2, was contacted by Doug Riggs of Hardin County Emergency Management. Mr. Riggs reported a manure release north of New Providence. Injectsom was in charge of the application. Mr. Simms also contacted Ms. Johnson and informed her of the manure release. Michelle Johnson, DNR Field Office 2, filed a Hazardous Substance Incident Report based on information she received from Mr. Riggs and Mr. Simms. The manure release occurred when Rich Groleau, an applicator for Injectsom, had finished filling the tanks and pulled away from the building with the injectors turned on. Manure was applied for approximately ¼ mile on County Highway S55. Mr. Simms also notified the Hardin County Sheriff's Office after noticing the manure spill. The New Providence Fire Department washed the manure off the blacktop with water. Ms. Johnson advised that the manure should have been thickened with sand and then scraped off the road.

3. On November 3 and November 6, 2006, Ms. Johnson spoke to Mr. Simms. Mr. Simms stated that Mr. Groleau was not a certified manure applicator and that he had worked for Injectsom longer than 30 days. On November 21, 2006, Ms. Johnson spoke to Mr. Simms and reminded him to submit the written notification of the release. Ms. Johnson also informed Mr. Simms the matter was being referred for further enforcement. Mr. Simms stated that Mr. Groleau was no longer employed by Injectsom. On December 1, 2006, Injectsom submitted the required written notification of the spill.

4. On November 28, 2006, Injectsom was issued a Notice of Violation letter for the use of a non-certified applicator. The letter reiterated the matter was being referred for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.103 provides that the Environmental Protection Commission shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC chapter 65.

2. 567 IAC 65.19(1) states a commercial manure service, a commercial manure service representative or a confinement site manure applicator shall not apply dry or liquid manure to land, unless the person is certified. Mr. Groleau was not a certified applicator. The above-mentioned facts indicate a violation of this provision.

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V. ORDER

THEREFORE, the DNR orders and Injectsom agrees to do the following:

1. Injectsom shall pay a penalty of \$4,000.00 to the DNR within 30 days from the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined in accordance with the following:

Economic Benefit – Injectsom failed to ensure its employee was properly certified. Injectsom saved time and the fees associated with the certification by allowing an employee to apply manure when not properly certified. Therefore, \$100.00 is assessed for this factor.

Gravity of the Violation – The violations cited in this order threaten the integrity of the regulatory program because compliance with the regulations is required of all persons in this state. There was a release of manure that had the potential to cause water quality violations. Based on the above considerations, \$1,700.00 is assessed for this factor.

Culpability – All commercial manure services have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Injectsom has been in the business for eight years and is well aware of the certification requirements; however it failed to ensure its employee was properly certified. Based on the above considerations, \$2,200.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of Injectsom. For that reason, Injectsom waives the right to appeal this administrative consent order or any part thereof.

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VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



JEFFREY R. VONK, DIRECTOR
Iowa Department of Natural Resources

Rich Leopold

Dated this 19 day of
February, 2007.



INJECTSOM, LLC
Steven E. Simmes

Dated this 16 day of
1-07, 2007.

No Central Office File Number; DNR Field Office 2; Kelli Book; Ken Hassenius; EPA;
VIII.D.4

AFO penalty
manure spill at New Providence
Adm. Consent order
2007-AFO